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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1418

COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, BERT W. JOHNSON, County Manager, and ROY McLAREN, Chief of Police of Arlington County,

Petitioners,

v.

RUDOLPH A. RICHARDS, MARIO A. CARBONI, FRANK TOMEK, THOMAS BECK, BRAXTON H. TABB, JR., MICHELLE McKENZIE, ELMER P. BORKOWSKI, ERNEST G. WALLACE, JOSEPH F. BELFIORE, JR., CAROLYN BOLLING, HOWARD E. HURLEY, JR., JAMES MOTT, H. D. MORRIS, GEORGE A. RISCILI, and RAY ELBERT PARKER,

Respondents.

BRIEF OF AMICUS CURIAE MONTGOMERY COUNTY, MARYLAND In Support of PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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OPINIONS BELOW

The opinion of the Supreme Court of Virginia, rendered on January 14, 1977, is reported at 217, Va.____, 231 S.E.2d 231. (Appendix A)[1] The unreported letter opinion rendered by the Circuit Court of Arlington County on June 18, 1975, appears as Appendix B.

JURISDICTION

The judgment of the Supreme Court of Virginia was entered on January 14, 1977, (Appendix C). This Court has jurisdiction by virtue of 28 U.S.C. §1257 (3).

QUESTION PRESENTED

Does a municipal ordinance which restricts, during certain time periods, on-street parking by non-residents in residential neighborhoods congested by commuter parking violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution when similar restrictions do not apply to residents of those neighborhoods?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> "SECTION 1 . . .No State shall deny any person within its jurisdiction the equal protection of the laws."

SECTION 29.D of the Zoning Ordinance of Arlington County, Virginia, entitled "Restriction on Parking in Districts in Which Commercial and Industrial Uses Are Not Permitted," is set forth in its entirety in Appendix D.

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1. Except as otherwise indicated, appendix designations refer to the Appendix to Arlington County's Petition for a Writ of Certiorari filed with this Court.

INTEREST OF AMICUS

Amicus Curiae Montgomery County, Maryland, is a sister jurisdiction of Arlington County, Virginia, located within the Metropolitan Area of Washington, D.C. Montgomery County has approximately 590,000 residents and is 504 square miles in size. Like Arlington County, Montgomery County contains within its boundaries numerous urban areas in which intensified commercial and industrial uses have grown up adjacent to or close by older well-established residential neighborhoods. The resultant impact in terms of traffic and parking congestion, air, noise and litter pollution, and the general adverse effect on the health, safety and welfare of its residential members of the community have become an increasing concern to the citizens and government of Montgomery County.

In 1974, after lengthy study, the Montgomery County Council adopted and the County Executive later implemented a residential parking permit ordinance which, although somewhat different in procedural aspects, has the same general effect as the Arlington County ordinance.[2] It too differentiates to some degree between residential and non-residential parking and authorizes certain restrictions on the latter. Like the Arlington County ordinance, the Montgomery County law was enacted in an effort to safeguard the health, safety and welfare of the County's citizens, to combat adverse environmental conditions in the County, and to preserve and protect the residential character of neighborhoods heavily congested by non-residential commuter parking. As was the case with the Arlington County ordinance, the Montgomery County perking permit program served, among other things, as part of a coordinated effort of the several jurisdictions in the Metropolitan Area of Washington, D.C. to respond to the expanding environmental problems causes by commuter automobile travel.

Recently, in an action before the Circuit Court of Montgomery County, Maryland, the County's residential parking permit ordinance was declared to create an unreasonable classification in violation of the Fourteenth Amendment.[3] This matter is presently on appeal before the Court of Special Appeals

2. See Appendix to this brief.

3. State v. Thompson, Criminal No. 19018, March 16, 1977.

of Maryland.[4] Unless this Court upholds the Arlington County ordinance and the residential parking permit concept represented thereby, Montgomery County and other jurisdictions throughout the country which have adopted or are contemplating the adoption of similar ordinances in order to alleviate environmental problems and to protect the safety and character of their residential neighborhoods will be powerless to address these goals in a meaningful way. Not only will jurisdictions be unable to deal with their own internal problems, but cooperative efforts among various government entities to relieve the increasing burdens created by commuter vehicular traffic will be to no avail. Accordingly, Montgomery County has a compelling interest in seeing that the Arlington County ordinance is sustained and that the decision of the Supreme Court of Virginia challenging that ordinance as violative of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution is reversed.

This brief is being submitted in accordance with Paragraph 4 of Rule 42 of this Court. It is submitted by special counsel retained by the County Attorney for Montgomery County, the authorized law officer of that jurisdiction.

STATEMENT OF THE CASE

At issue in this case is the constitutionality under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution of a municipal ordinance enacted by the County Board of Arlington County, Virginia, authorizing certain restrictions to be placed on commuter parking in residential areas of the County. (Appendix D) Under the Arlington County ordinance the County Manager is responsible for determining when more than 75 percent of the available on-street parking capacity in a particular residential neighborhood is used. The County Manager must then determine when more than 25 percent of the utilized on-street spaces are occupied by vehicles the operators of which are destined for commercial or industrial areas and not for

4. Appeal noted April 12, 1977.

the particular residential area in question. When both conditions have been met the County Manager is authorized to restrict parking in the residential area during certain time periods to holders of valid parking permits as well as to service and delivery vehicles. Permits are issued by the County to residents of the area in question, for their visitors, and for vehicles of persons doing business with those residents.

Like other jurisdictions throughout the country which have enacted similar laws,[5] the Arlington County ordinance was an attempt by the County government to address the growing troubles experienced by residential neighborhoods in particular and by the County in general as a result of commuter and transient parking. In this regard, the purposes of the Arlington County ordinance were explicitly stated by the County Board in the preamble to the ordinance itself. These are:

> "To reduce hazardous traffic conditions resulting from the use of streets within areas zoned for residential uses for the parking of vehicles by persons using districts zoned for commercial or industrial uses or the conditional uses allowed in special districts under the Zoning Ordinance of Arlington County; to protect those districts from polluted air, excessive noise, and trash and refuse caused by the entry of such vehicles; to protect the residents of those districts from unreasonable burdens in gaining access to their residences; to preserve the character of those districts as residential districts; to promote efficiency in the maintenance of those streets in a clear and safe condition; to preserve the value of the property in those districts; and to preserve the safety of children and other pedestrians and traffic safety, and the peace, good order, comfort, convenience and welfare of the inhabitants of the County." (Appendix D at 25a).

5. In addition to the Arlington and Montgomery County programs, counsel for amicus is aware of similar parking permit laws having been enacted or under consideration in Washington, D.C.; Charlottesville and Richmond, Virginia; Boston and Cambridge, Massachusetts; Wilmington, Delaware; Milwaukee, Wisconsin; and San Francisco, California.

Following its enactment, and after the requisite findings had been made by the County Manager, the parking permit ordinance was placed into effect on a limited basis in the Aurora Highlands area of Arlington County. This is an established residential neighborhood near U.S. Route 1, adjacent to a large complex of office and commercial buildings called Crystal City.

Shortly after it went into effect the parking permit ordinance was challenged in a suit brought by a number of commuters who worked in Crystal City and who had been using the Aurora Highlands area for all day on-street parking. Among other things, the commuters contended that the County's parking permit program denied them the equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution.

At the trial in the Arlington County Circuit Court the County introduced evidence demonstrating the existence of the problems giving rise to the ordinance, the rational basis for the classification contained in the ordinance, and the appropriateness of the ordinance as a method of dealing with the problems experienced by residential neighborhoods as a result of commuter parking congestion. The conditions supporting enactment of the ordinance were substantiated not only by testimony from residents of the Aurora Highlands area, (Record at 340-41)[6] but also by expert testimony from transportation planners and environmental specialists. (Record at 256-293).

The County further demonstrated at the trial that the ordinance did in fact function as intended and that it achieved the beneficial results sought by its enactment. (Record at 347). It was also established at trial that the Arlington County parking permit program was part of a coordinated effort by various jurisdictions in the Washington, D.C. area to discourage commuter automobile traffic and thereby to improve the environmental quality of the region. (Record at 259-296).

While finding no fault with the objectives of the ordinance, the trial court ruled that the classification used by the ordinance

6. Record references relate to the record filed with the Supreme Court of Virginia on appeal below. Copies of this record have been docketed with this Court.

did not bear a reasonable relationship to its stated goals. (Appendix B at 21a). Without any specific findings of fact, the Court concluded that the ordinance violated the due process clauses of the state and federal constitutions and the Equal Protection Clause of the United States Constitution. (Appendix B at 22a).

Upon appeal, the Supreme Court of Virginia chose not to deal with the evidentiary record and instead treated the question presented as one of law involving the facial validity of the ordinance. The Court found that the objectives of the ordinance "constitute a legitimate governmental interest." (Appendix A at 7a). However, the Court held that the classification in the ordinance differentiating between residential parkers and non-residential parkers "bears no reasonable relation to its stated objectives." (Appendix A at 12a). The decision of the trial court was therefore affirmed.

REASONS FOR GRANTING THE WRIT

The decision of the Supreme Court of Virginia in the instant case is contrary to past opinions of this Court defining when and under what circumstances a particular ordinance or course of action violates the Equal Protection Clause of the United States Constitution. The decision below likewise conflicts with precedent established by this Court recognizing the broad extent to which state and local jurisdictions may legislate in the interest of preserving and protecting the character and quality of residential neighborhoods. Unless the decision below is reversed by this Court, the validity of numerous residential permit programs throughout the country will be cast into doubt. Likewise, other jurisdictions which have been contemplating the adoption of such programs as a reasonable means for dealing with serious environmental, safety and planning problems will be discouraged from doing so.

1. The Decision Below Directly Conflicts With Precedent Established By This Court Setting Standards of Analysis for Evaluation of Legislation Challenged Under the Equal Protection Clause.

The Court below erred in finding the Arlington County ordinance invalid as a matter of facial impression. It is only when distinctions drawn by a statute in question are based on reasons

totally unrelated to the pursuit of a legislative goal, that they should be set aside as violative of the Equal Protection Clause of the Fourteenth Amendment. *McDonald v. Board of Election Commissioners,* 394 U.S. 802, 809 (1969). A classification, though discriminatory, is not arbitrary nor violative of equal protection if any state of facts can be reasonably conceived that would sustain it. *McGowan v. Maryland,* 366 U.S. 420, 426 (1961). If a distinction is not arbitrary and is in fact founded on a substantial difference or apparent reasons suggesting the need for differing classifications, the Court has no right to interfere with the exercise of legislative discretion. *Cf. Levy v. Louisiana,* 391 U.S. 68 (1968).

In the instant case the problems sought to be addressed were clearly stated in the preamble to the Arlington County ordinance. In addition to protecting and preserving the character and quality of the County's residential neighborhoods the ordinance sought to alleviate safety and environmental problems, all stemming from the adverse impact and congestion generated by commuter and transient parking in residential areas. It is significant to note that the Arlington County ordinance addressed a problem unique to residential neighborhoods adjacent to or nearby densely used commercial and industrial zones. The type of difficulties imposed on such neighborhoods as a result of parking by non-residents were not necessarily shared by other residential areas farther removed from the commercial or industrial zones. Accordingly, these problems and the mechanism chosen by the government to deal with them must be judged in their own special light. It would be a mistake to evaluate the needs of certain areas experiencing distinct problems and conditions in terms of what might or might not be appropriate in other non-impacted areas of the County. Whether a classification is reasonable or unreasonable depends upon the facts presented by the particular case at hand. *Seaboard Air Line R.R. v. Seegers,* 207 U.S. 73, 76-77 (1907).

The Arlington County ordinance demonstrates on its face the reasonableness of the classification in question. Once the Arlington County Board decided to act, the avenues open to the Board in striving to accomplish its stated goals were twofold. The Board could have limited all parking in particular residential

areas, or the Board could have restricted parking only on the part of those non-resident commuters and transients who have no reason to be in the residential area other than to secure a place to park. Of necessity, the Board had to deal with a classification between residential parkers, their visitors and service vehicles on the one hand and non-residential commuter parkers on the other. It was commuter parking, not the residential parking which created the conditions that the Board sought to correct.

To rule, as did the Supreme Court of Virginia, that the distinction set out in the Arlington County ordinance violates the Equal Protection Clause is to effectively deprive state and local jurisdictions of the ability to ever act to alleviate the problems addressed in that ordinance. Though acknowledging the legitimate goals of the Arlington County ordinance,[7] the decision of the Court below would leave the County with no other choice than to restrict all parking in the congested residential areas—resident parking included. To subject the residents themselves to parking restrictions, thereby denying them ready access to their dwellings, in an effort to solve a problem created by nonresidential parkers would compound the very difficulties the County Board sought to resolve. Under these circumstances the residents would have been no better off, and in reality would have been much worse off, than they previously were without any parking restrictions or prohibitions. Rather than serving as a protection, such action would in fact hasten the destruction of the residential character of the neighborhoods involved.

By choosing to restrict commuter parking, the Arlington County Board, as a matter of public policy, selected that avenue which was strictly limited to accomplish the stated goals of the ordinance and which represented the most practical course under the circumstances. This Court has held that in testing legislation against the Equal Protection guarantee the Court is not concerned with the soundness of the distinctions drawn, but rather it is sufficient that the legislature believes the distinctions drawn are valid as a basis of public policy for the people of that particular jurisdiction. *Safeway Stores, Inc. v. Oklahoma Retailer Grocers Assn.* 360 U.S. 334, 342 (1959).

7. Appendix A at 7a.

Likewise, the legislature is not compelled to attempt to deal with all possible solutions to a given problem. The fact that the Arlington County ordinance addresses the particular difficulties resulting from commuter parking in congested residential neighborhoods as opposed to parking and traffic problems in general throughout the County does not render the ordinance constitutionally suspect. It is well settled that the legislature may select one phase of a particular field of interest and apply a remedy there to the exclusion of other possibilities. *Williamson v. Lee Optical Co.*, 348 U.S. 483, 489 (1950); *Schilb v. Kuebel*, 404 U.S. 357, 364 (1971).

If the Supreme Court of Virginia had further examined the facts and circumstances behind the Arlington County ordinance, as well as the overriding interests which the Arlington County Board was attempting to protect weighed against the interests of commuter parkers who might be somewhat disadvantaged by the ordinance, the Court should have readily perceived the reasonableness of the classification. Compare *Williams v. Rhodes*, 393 U.S. 23, 30 (1968); *Kramer v. Union Free School Dist. No. 15*, 395 U.S. 621, 626 (1969); *Dunn v. Blumstein*, 405 U.S. 330, 335 (1972). Instead, without stating the reasoning therefor, the Court below characterized the Arlington County parking permit program as "invidious discrimination." (Appendix A at 12a.)

It is clear that "invidious discrimination" is indeed prohibited under the Equal Protection Clause. *Williamson v. Lee Optical Co. supra* at 489, and *Schilb v. Kuebel, supra* at 364. However, it can hardly be said that a restriction on commuter parking imposed in a manifest effort to alleviate problems created by that type of parking constitutes "invidious discrimination" as that concept has been previously dealt with by this Court.[8]

8. *See, e.g.*, Invidious discrimination found: Williams v. Rhodes, *supra* (election ballot discrimination); Levy v. Louisiana, *supra* at 68 (denial to illegitimate children of right to recover for wrongful death of mother); No invidious discrimination: Queenside Hills Realty Co. v. Saul, 328 U.S. 80 (1963) (prohibition against all persons except practicing lawyers from engaging in debt adjustment activities); Salyer Land Company v. Tulare Lake Basin Water Storage District, 410 U.S. 719 (1973) (right to vote for Board members of a special water district restricted to landowners as opposed to tenants in that district).

The permissible bounds which may be reached when constructing legislative classifications were recently cited by this Court in *City of New Orleans v. Dukes*, 427 U.S. 297 (1977). Therein, the Court stated:

> "Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest."
> *New Orleans v. Dukes, supra* at 303.

In the case of the Arlington County Ordinance, the legitimate interest of the government was readily acknowledged by the Court below;[9] the classification involved in no way approaches any of the enumerated "inherently suspect distinctions;"[10] and the rationale of the classification is apparent from the stated purposes of the ordinance.[11] Under these circumstances, and in light of *New Orleans v. Dukes, supra,* the inquiry then focuses on the matter of fundamental rights.

Parking has never been one of the fundamental personal rights recognized by this Court as being included within the protection of the Equal Protection Clause. To the contrary, the regulation of motor vehicles and the control of streets and highways is a well-recognized incident of the governmental police powers. *Sproles v. Binford*, 286 U.S. 374 (1932); *Silver v. Silver*, 280 U.S. 117 (1929). Yet the consequence of the decision by the Supreme Court of Virginia in the instant case is to place commuter parking in residential areas beyond the control of government regulation, thereby effectively creating for commuters a right to park equivalent to the well-established, traditionally-protected fundamental rights previously enunciated by this Court. *See, e.g., Harper v. Virginia State Board*, 383 U.S. 663, (1966) (Voting Rights); *NAACP v. Button*, 371 U.S. 415, (1963) (Access to Courts); *NAACP v. Alabama ex rel* Patterson, 357 U.S. 449, (1958) (Right of association); *Griswold v. Connecticut*, 381 U.S. 479 (1965) and *Eisenstadt v. Baird*, 405 U.S. 438, (1972) (Right of privacy).

9. Appendix A at 7a.
10. *See* New Orleans v. Dukes, *supra* at 303.
11. Appendix D at 25a.

It is simply stretching the fundamental rights issue to the breaking point to presume that a supposed right to park should stand on equal footing with the right to vote, the right to privacy, the right to association, and the right of access to the courts. Such a determination has yet to be made and there has been no valid reason advanced to suggest why it should be made at this point or in the future. If anything, given the current concentrated efforts of federal, state and local jurisdictions to discourage commuter automobile travel and to counteract the adverse effects therefrom, government regulation and control of motor vehicle parking in situations such as that presented by the instant case should be supported rather than discouraged by the courts.

The Court below further found that "[I]t appears from the face of the ordinance that the crucial basis of the classification is residence in a selected area." (Appendix A at 7a). The suggestion is that somehow a classification founded on residence might be constitutionally suspect. However, the ability of the legislature to draw a distinction based on residence without infringing on constitutionally-protected rights has been well established by this Court. *McCarthy v. Philadelphia Civil Service Comm'n.*, 424 U.S. 645 (1976) (per curiam); *City of Pittsburgh v. Alco Parking Corp., et al.*, 417 U.S. 369 (1974).

It is significant to note, in connection with the instant case, that in *Alco Parking Corp., supra,* the Court specifically recognized the right of the City of Pittsburgh to distinguish between residential and non-residential parking and to impose added burdens on the latter. In this instance a tax on off-street parking facilities was involved. The City justified treating non-residential parking differently from residential parking on the basis of non-residential parking's "relationship to traffic congestion . . . problems requiring municipal services and affect[ing] the public interest, differently from parking places accessory to the use and occupancy of residences." *Supra* at 378. The Court in *Alco* was apparently unimpressed that non-residential parking would bear burdens greater than those experienced by residential parking. The Court said: "The City was constitutionally entitled to put the automobile parker to the choice of using other transportation or paying the increased tax." *Alco, Supra* at 379.

It might well have been, as suggested by the Court below,[12] that in earlier times and under different circumstances residents of premises abutting a public street would have had no greater right to park on that street or in that area than had any other member of the general public. But times and conditions change. The problems addressed in the Arlington Court parking permit ordinance did not exist and may not have been contemplated several years ago. These problems and the manner in which they should be treated must be evaluated in present day terms. This Court, emphasizing the need for adaptability when dealing with equal protection guarantees, stated:

> "[T]he Equal Protection Clause is not shackled to the political theory of a particular era. In determining what lines are unconstitutionally discriminatory, we have never been confined to historic notions of equality, any more than we have restricted due process to a fixed catalogue of what was at a given time deemed to be the limits of fundamental rights. [Citation omitted] *Notions of what constitutes equal treatment for purposes of the Equal Protection Clause do change.*" *Harper v. Virginia State Board of Elections, supra* at 669. (Emphasis added)

2. The Decision Below Violates Previous Holdings of This Court as to the Extent to Which Local Jurisdictions May Legislate in the Interest of Preserving and Protecting Residential Neighborhoods.

This Court has traditionally recognized that the preservation of the character of residential neighborhoods is an appropriate function of local government. *Euclid v. Ambler Realty Company*, 272 U.S. 365 (1926). In *Berman v. Parker*, 348 U.S. 26 (1957), the Court held that the police power of the State included the power of the legislature to determine that a community should be "beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully protected." *Id.* at 33.

A recent case in point affirming the government's right to protect the interests of residential neighborhoods is *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974). Therein the Court

12. Appendix A, at 9-10a.

upheld action taken by a local legislature to safeguard the residential character of neighborhoods by imposing restrictions on the number of unrelated persons who could reside in a single-family home. Mr. Justice Douglas, writing for the majority, specifically recognized that the restriction of motor vehicles and the enjoyment of clean air in residential neighborhoods are legitimate goals of local government, when he stated:

> "A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. This goal is a permissible one within *Berman v. Parker, supra*. The police power is not confined to eliminaton of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people." *Belle Terre, supra* at 9.

Mr. Justice Marshall, dissenting in *Belle Terre*, felt that the ordinance in question impinged upon fundamental personal rights and therefore could be sustained only upon the showing of a compelling governmental interest under the test set out in *Shapiro v. Thompson*, 394 U.S. 618 (1969). Nevertheless, Mr. Justice Marshall found ample reason to agree with the majority with respect to the government's goal of preserving the character and quality of residential neighborhoods. He stated:

> "I would also agree with the majority that local zoning authorities may properly act in furtherance of the objectives asserted to be served by the ordinance at issue here: restricting uncontrolled growth, solving traffic problems, keeping rental costs at a reasonable level, and making the community attractive to families. The police power which provides the justification for zoning is not narrowly confined." *Belle Terre, supra* at 13 (Marshall, J. dissenting).

Young v. American Mini Theatres, Inc. 427 U.S. 50 (1976), was an even more recent case supporting the right of local government to protect the character and quality of its neighborhoods. In *Young* the Court upheld the right of the City of Detroit to exclude adult theatres from residential neighborhoods, among other places. In so doing, the Court ruled that such restriction did not violate the Equal Protection Clause or First Amendment guarantees. Mr. Justice Stevens, writing for the majority in *Young* stated:

> "It is not our function to appraise the wisdom of its decision to require adult theaters to be separated rather than concentrated in the same areas. In either event, *the city's interest in attempting to preserve the quality of urban life is one that must be accorded high respect. Moreover, the city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems." Id.* at 71. (Emphasis added).

Considering the past decisions of this Court consistently sustaining the legitimacy of governmental goals to secure and safeguard the residential character of neighborhoods, the Arlington County ordinance should be upheld on a similar basis. If the government is considered to have a sufficiently compelling interest to control the manner of occupancy of dwellings in residential neighborhoods and to exclude certain categories of individuals from such occupancy, thereby affecting a fundamental right of association, *Belle Terre, supra,* then it likewise has a compelling interest in the regulation of parking by non-residents in congested residential neighborhoods rendered unsafe and unhealthy as a result of commuter parking. If the government, in the face of First Amendment and Equal Protection challenges, is found to have a compelling interest in restricting the locations of adult theaters, *Young, supra,* it similarly has an overriding interest in regulating commuter parking in congested residential areas.

3. The Guidance of This Court is Needed to Resolve Conflicting Judicial Opinions Throughout the Country on the Issue Presented by This Petition.

The concept behind the Arlington County parking permit

ordinance is not unique to that locality. There is nationwide interest in this subject matter and, for similar reasons, a number of other jurisdictions have adopted parking permit programs closely akin to the Arlington County law.[13] Although for the most part these differ to some degree in procedural aspects, the net result is to differentiate between residential and non-residential parking.

Given the broad scope of the ruling by the Supreme Court of Virginia in the instant case, virtually all other residential parking permit laws throughout the country would have to fall if that decision were accepted as correct. In reality, the state of the law concerning parking permit ordinances is unsettled. In addition to the decision below in the instant case and the ruling of a lower court on the ordinance of Amicus Montgomery County,[14] a number of other courts in separate areas of the country have reached differing results as to the validity of residential parking permit programs.

Most recently the Supreme Judicial Court of Massachusetts upheld, in the face of an equal protection challenge, a parking permit ordinance which restricted parking by non-residents in certain congested residential areas in the City of Cambridge. *Commonwealth v. Petralia,*_____N.E. 2d_____, No. M-729, April 29, 1977. Previously an Ohio court held a residential parking permit program to be violative of equal protection. *State v. Whisman,* 24 Ohio Misc. 59, 263 N.E. 2d 411 (1970). Last year, on similar grounds, the Superior Court for the District of Columbia preliminarily enjoined the implementation of a residential parking permit ordinance in certain congested neighborhoods in that jurisdiction. *Georgetown Association of Businessmen v. District of Columbia,* Civ. Actions Nos. 7242-76, *et al* (Aug. 9, 1976).

It is apparent from the widespread involvement of various jurisdictions with the issue of parking legislation and the disparity among lower court decisions on this subject that a definitive ruling is needed from this Court.

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13. *See* note 5, *supra.*
14. *See* note 3, *supra.*

Unless the Arlington County ordinance and similar legislation is sustained, jurisdictions will not only lack the ability to deal locally with problems affecting residential neighborhoods, but they will be unable to respond effectively to federal mandates such as those imposed by the U.S. Environmental Protection Agency which, among other things, recommend certain restrictions on commuter traffic.[15] To the extent that a parking permit ordinance would create a disincentive to commuter vehicular traffic, in favor of other alternatives, this would be consistent with the efforts of EPA and various State authorities to prescribe transportation control measures to reduce ambient concentrations of carbon monoxide as required by the Federal Clean Air Act of 1970. (42 U.S.C. §1857 *et seq.*).

It will not suffice to say that the impact of the varying lower court decisions on the matter of parking permit ordinances is localized in nature and will affect only those subdivisions within the jurisdiction of those courts. The decision of the Supreme Court of Virginia is a good case in point.

If Arlington County is judicially restricted from implementing a residential parking permit program, the County will be impeded from realizing one of the goals of its ordinance–the enhancement of environmental quality. In such case, the effect of Arlington County's inability to act will be felt by Amicus Montgomery County and other jurisdictions which along with Arlington and Montgomery Counties comprise the Metropolitan Washington Council of Governments (COG). These component jurisdictions have been working cooperatively as the National Capital Interstate Air Quality Planning Committee (AQPC) in the interest of developing air quality and transportation control plans for the region.[16] The fact that Arlington County and other Virginia jurisdictions cannot take what are believed to be necessary measures to control commuter traffic will impact on the decisions and actions of the District of Columbia and Maryland in this regard. Similar effects could well be experienced in other multi-jurisdictional areas throughout the country where varying legal interpretations of parking permit programs might come into play.

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15. *See* 38 Fed. Reg. 30626, 30629 (1973)
16. *See* 38 Fed. Reg. 16556 (1973)

CONCLUSION

The Arlington County ordinance is reasonably related to its stated purposes and well within the permissible bounds of legislative classification recognized by this Court. Accordingly, the petition of Arlington County for certiorari should be granted. Under the circumstances of this case, summary reversal of the judgment below seems appropriate.

Respectfully submitted,

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APPENDIX A

MONTGOMERY COUNTY CODE 1972, as amended, Chapter 31, titled "Motor Vehicles and Traffic"; Article IV, titled "General Parking Regulations;" Section 31-48A, titled "Parking Permit Areas".

(a) The County Council finds that the health, safety and welfare of many residents of the County are adversely affected by burdens placed on residents by virtue of major public facilities and programs created by governmental action. Frequently, the use of streets within residential areas for the parking of vehicles by persons using adjacent commercial, industrial and transit areas and other areas, facilities and programs emanating from planning, zoning and other decisions by the government results in hazardous traffic conditions, the overburdening of existing streets, roads and other facilities, air and noise pollution, and the inability of residents of certain areas to obtain adequate parking adjacent to or close by their places of residence and to secure ease of access to their places of residence. In order to reduce to the extent possible the aforementioned conditions, to foster the use of mass transit facilities and to promote the safety, peace, good order, comfort, convenience, health and welfare of the residents of the County, the Council deems it essential that the parking permit authorization provided for in this Section be enacted.

(b) The County Executive is hereby authorized to designate, by written order or regulation, roads, streets and other areas within the County in which the parking of vehicles may be restricted, in whole or in part, during certain specified times, to holders of valid parking permits issued pursuant to this section. The County Executive shall consider the institution of a parking permit system upon petition by the residents of a given area. The authority granted herein shall be in addition to, and may be exercised in conjunction with, any other authority the County Executive may have to regulate the times and conditions of motor vehicle parking.

(c) The designation of a parking permit area shall take into account, among other things:

(1) The effect on the safety of residents of the area under consideration from intensive use by non-residents for parking of vehicles.

(2) The need of the residents of the area to obtain adequate on-street parking adjacent to or close by their places of residence.

(3) The difficulty or inability of residents of the area to secure adequate on-street parking adjacent to or close by their places of residence because of widespread use of available parking spaces in that area by non-resident transient motorists.

(4) The impact of major public facilities and programs on the health, safety, and welfare of the residents of the area and any unreasonable burdens placed on those residents in securing adequate on-street parking and gaining access to their places of residence by virtue of such facilities and programs.

(5) The likelihood of alleviating, by use of a parking permit system, any problem of non-availability of residential parking spaces.

(6) The desire of the residents in the area for the institution of a parking permit system and the willingness of those residents to bear the administrative costs incidental to the issuance of permits authorized by this Section.

(7) The fact that the residents of a contemplated parking permit area have contributed to the cost of construction and/or improvement of streets and roads in such area either by the direct assessment of costs or indirectly to the extent such costs are reflected in purchase or rental prices paid by those residents.

(8) The need for some parking spaces to be available in the area under consideration for use by visitors and the general public.

(9) Such other factors as the County Executive shall deem relevant.

(d) In order to determine whether a particular area or location should be designated as a parking permit area, the County Executive or the Executive's designee shall conduct, prior to the designation of a parking permit area, or prior to the withdrawal of such designation once it is established, a public hearing at which time any interested person shall be entitled to appear

and be heard. Such hearing shall be held only after due notice has been published in a newspaper of general circulation throughout the County. The notice shall clearly state the purpose of the hearing, the exact location and boundaries of the parking permit area under consideration, and the reasons why such area is being proposed for designation or withdrawal of designation as a parking permit area and the proposed parking permit fee that would be charged. In addition to the published notice, a similar notification shall be prominently posted within the area under consideration for designation as a parking permit area.

(e) Within 45 days following the close of the public hearing, the County Executive shall decide, based on the record of that hearing, whether or not to designate the area under consideration as a parking permit area or to remove the designation in the case of an established parking permit area. The time for decision by the County Executive may be extended for an additional period of 30 days for good cause shown. The decision of the County Executive shall be publicly announced in the same manner as the announcement of the hearing.

(f) Following the designation of a parking permit area, the County Executive or the Executive's designee shall issue appropriate parking permits and shall cause parking signs to be posted in the area, indicating the times, locations and conditions under which parking shall be by permit only. Permits shall be issued only to persons residing on property immediately adjacent to a street or road within the parking permit area. A permit shall remain valid for such time as the holder thereof continues to reside in the area and during the period for which the permit is issued. Permits may be transferred only in accordance with procedures to be established in writing by the County Executive.

(g) The County Executive is authorized to establish, after due notice and opportunity for interested parties to be heard, written regulations to implement the provisions of this Section.

(h) The County Executive is authorized to establish, by written regulation, parking permit fee for permits issued pursuant to this Section in an amount sufficient to pay the costs incidental to the issuance of permits authorized by this Section.

(i) The parking of any vehicle or the use of any parking permit in a manner contrary to the provisions established by the

County Executive pursuant to this Section is prohibited and the same is hereby declared to be unlawful and a misdemeanor. Any person violating this Section shall, upon conviction thereof by a court of competent jurisdiction, be fined not more than fifty dollars for each violation and, in default of any fine so imposed, shall be imprisoned for a period not to exceed three days for each violation.